In the High Court of Judicature at Madras

Dated: 09.01.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Appeal Nos.2378 to 2380 of 2002
and W.A.M.P.Nos.4042 to 4044 of 2002
and W.V.M.P.Nos.4934/2003 and 6276 and 6277/2003

M.Chellappa ..Appellant in both Appeals

..vs..

1. The Revenue Divisional Officer,
   Coimbatore.

2. The Tahsildar,
   Coimbatore South,
   Coimbatore.

3. The Revenue Inspector,
   Singanallur,
   Coimbatore-5. ..Respondents in W.A.2378/2002

1. The District Collector,
   Coimbatore.

2. The Tahsildar,
   Coimbatore South,
   Coimbatore. ..Respondents in W.A.Nos.
   2379 and 2380/2002

Writ Appeals filed under Clause 15 of Letters Patent, against the common Order made in W.P.Nos.14984 of 1995, 15912 of 1996 and 12931 of 1997 dated 06.03.2002 respectively petitions presented to this Court to issue writs of I. certiorari calling for the records pertaining to the distrait order under Sec 8 of the revenue recovery Act issued by the 2nd respondent1. dated 19.8.95 in his Ref.No.Na.Ka.26697/94 . 2 dated 21.10.96 passed in his Ref.No.Va.Pa.100/95 AA1 and quash the same and (II) Mandamus directing the Respondents to forbear from levying or collecting any amount either by way of competitive rent or otherwise in excess of

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B Memo charges paid by the Petitioner in respect of his occupation of four cents of land in S.F.No.588 of Upplipalayam Village, Coimbatore Taluk, Coimbatore District.

For Appellant : Mr.P.K.Rajagopal

For Respondents : Mr.K.Elango, Spl.G.P.,

COMMON JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.,)

The above writ appeals are filed against the common order dated 06.03.2002 made in W.P.Nos.14984 of 1995, 15912 of 1996 and 12931 of 1997, in and by which, the learned Judge, after finding no merits, dismissed all the writ petitions.

2. Heard learned counsel for appellants as well as learned Special Government Pleader for respondents.

3. In view of the order to be passed hereunder, it is not necessary to refer all the factual details as stated in the affidavit and counter affidavit filed by the respective parties.

4. Learned counsel for the appellant, by taking us through the relevant provisions, namely, Sections 3, 5, 5-B and 8 of the Land Encroachment Act, 1905 as well as the impugned demand notices, contended that the respondents are not justified in demanding a sum of Rs.2,40,000/- per annum as competitive rent for occupation of 4 cents of land belonging to the Government. He also contended that in the absence of any Rule and also of the fact that the appellant was not given opportunity to putforth his stand, the demand cannot sustain. According to the learned counsel for the appellant, these relevant aspects have not been considered by the learned Judge and committed an error in dismissing all the three writ petitions.

5. On the other hand, the learned Special Government Pleader appearing for the respondents submitted that taking note of the area and the extent of the land, the respondents are justified in making a demand and prayed for dismissal of the writ appeals.

6. We have carefully considered the rival contentions and also perused the relevant provisions.

7. Section 3 of the Land Encroachment Act empowers the authorities to levy in respect of lands unauthorisedly occupied by the persons concerned. As per Section 5, any person in any area other than the transferred territory liable to pay assessment and

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the power is given to the Collector to impose penalty after notice. Section 5-B deals with notice before taking proceedings under section 5.

8. Mr.Rajagopal, learned counsel for the appellant, by drawing our attention to Section 8, submitted that though the said provision enables to make rule, according to him, there is no relevant rule or rules for implementing those provisions. Whatever it may be, in view of Sections 3 and 5 though the respondents are empowered to levy of assessment on lands unauthorisedly occupied by the persons concerned (like the petitioner), it is but proper to afford an opportunity before fixing any amount.

9. The perusal of the demand notices clearly shows that except mentioning the sum, namely, Rs.2,40,000/- per annum, it does not disclose any other details, namely, how the said amount has been arrived at by the authorities concerned. It is also relevant to mention that during the pendency of the above proceedings, the appellant was asked to pay only Rs.8,680/- per annum. In view of the same, instead of going into the merits of the rival claim, we set aside the impugned demand notices and remit the matters to the first respondent in W.A.2379 and 2380 of 2002, namely, District Collector, Coimbatore, to pass fresh orders. The first respondent is directed to issue notice to the appellant and pass appropriate orders, after affording adequate opportunity to the appellant. In the proposed enquiry, the appellant is permitted to raise all the permissible objections.

All the writ appeals are allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

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   Coimbatore.

1 cc to mr.P.K.Rajagopal, Advocate, Sr. 2280
1 cc to the Government Pleader, Sr. 1825

Writ Appeals No.2378 to 2380 of 2002

MM (CO)
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